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SENATE



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CANADA

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• 41st PARLIAMENT

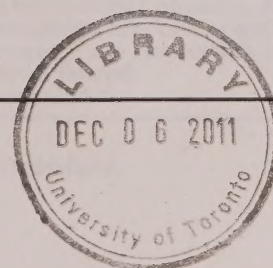
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OFFICIAL REPORT
(HANSARD)

Thursday, November 3, 2011

The Honourable NOËL A. KINSELLA
Speaker



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THE SENATE

Thursday, November 3, 2011

The Senate met at 1:30 p.m., the Speaker in the chair.

Prayers.

SENATORS' STATEMENTS

VETERANS' WEEK

Hon. Donald Neil Plett: Honourable senators, I rise today to pay tribute to those who made the ultimate sacrifice in defence of our country. As Veterans' Week quickly approaches, I ask all senators not just how we will remember, but also whom we will remember.

Ninety-three years ago, on the eleventh day of the eleventh month at the eleventh hour, silence descended on the battlefields. The armistice treaty between Germany and the Allies silenced the guns of the First World War.

Veterans' Week is an opportunity for all of us to recognize and honour the past and present sacrifices of the men and women in the Canadian Armed Forces. We say "thank you" for all they have given up and will continue to give up to fight for our country.

From the First World War and the Second World War, to the Korean War, the mission in Afghanistan, and countless peacekeeping assignments, our troops have always stood up for Canadian values, fighting with bravery, courage and dedication. We pay tribute to the bravery and unwavering determination of those soldiers who lost their lives in battles past, and we recognize the Canadian soldiers who are working to defend Canadian values and sovereignty today. It is because of our soldiers, sailors, airmen and airwomen that Canadians and people around the world can live safer and better lives.

Wars are not only a challenge for our soldiers abroad. They also impact those left behind. While heroic Canadians risk their lives overseas, mothers, fathers, spouses and children wait patiently on home soil for their loved ones to return. While we honour the generations who have bravely served this country, and those who wear the Canadian uniform with pride today, we must also ensure that the next generation of Canadians is aware, not only of the battles, but also of the people — the sons and daughters, the fathers and mothers, and brothers and sisters — who fought and continue to fight to uphold Canadian values. They have helped to shape our country and their service is a point of national pride.

Next week, Veterans' Week, and on November 11, we will honour all those who were and are willing to place themselves in harm's way in order to stand up for what is right and protect the values Canadians hold dear.

At the going down of the sun and in the morning,
we will remember them.
Lest we forget.

MULTICULTURALISM

FORTIETH ANNIVERSARY OF CANADIAN POLICY

Hon. Donald H. Oliver: Honourable senators, I rise today to call your attention to the fortieth anniversary of Canada's multiculturalism policy.

The policy was adopted by the Government of Canada based on recommendations of the Royal Commission on Bilingualism and Biculturalism, published in its fourth and final report in 1969. The report examined the whole question of cultural and ethnic pluralism in Canada, and the status of our various cultures and languages.

It was on October 8, 1971, that former Prime Minister Trudeau introduced multiculturalism in the House of Commons as an official Canadian policy. Trudeau said:

The government will support and encourage the various cultures and ethnic groups that give structure and vitality to our society. They will be encouraged to share their cultural expression and values with other Canadians.

Like most Canadians, I recognize multiculturalism as a bona fide Canadian value. Indeed, Canada has been regarded as a leader in this respect around the world. However, in my view, the Trudeau concept of multiculturalism has failed. Everything has changed in the last 40 years. Allow me to explain.

Throughout the 1970s, our multicultural policy encouraged individuals to participate in Canadian society by valuing their own cultural identities. In other words, ethnic groups tended to highlight and celebrate their own cultural traditions and customs. The consequence was that it created a division among all Canadians and it led to much criticism. Therefore, more than 15 years after the policy's adoption, Prime Minister Mulroney's Progressive Conservative government went one step further in passing the Multiculturalism Act.

Mulroney challenged Trudeau's concept. He wanted to find a better way of fostering diversity without dividing Canadians. The act brought a clearer sense of purpose and direction to official multiculturalism. It enshrined in law the recognition of Canada's multicultural reality and the responsibility of federal institutions to reflect that reality and implement multicultural policies.

One of the objectives of the act was to promote the full and equitable participation of individuals and communities of all origins in the continuing evolution and sharing of all aspects of Canadian society and to assist them in the elimination of any barrier to that participation.

In other words, the Multiculturalism Act tried to steer away from causing divisions between new and old Canadians. Rather, it served as a framework for intercultural relations — not cultural or ethnic isolation. Mulroney recognized the need to highlight

what all Canadians have in common. It also helped remove some of the barriers to economic participation that racial minorities faced in the workplace by ensuring all received equal treatment.

Honourable senators, 40 years since the adoption of Canada's multiculturalism policy, we as a nation are still struggling with this complex notion. The Harper government recognizes the need to promote shared Canadian values rather than cultural differences. Today's Conservatives represent all Canadians and work toward advancing public policies that favour a better Canada where all are treated equally.

We understand the need to foster diversity without divisiveness.

• (1340)

GLOBAL MATERNAL AND CHILD HEALTH

INTER-PARLIAMENTARY UNION REPORT

Hon. Salma Atallahjan: Honourable senators, a 15-year-old girl in sub-Saharan Africa has a one in 31 chance of dying from pregnancy-related causes in her lifetime. In 2008, an estimated 358,000 women died from maternity-related causes, and in 2009, around 8 million children died before reaching their fifth birthday. It is clear that despite recent progress and growing international attention on this issue, there is still much work ahead in improving global maternal and child health indicators. Many countries are not on track to reach Millennium Development Goals 4 and 5 on maternal and child health. Moreover, progress in reducing maternal and child mortality has been uneven across regions and within countries.

As parliamentarians, we can play a critical role in the advancement of maternal, newborn and child health. That is why I was honoured to serve as the Canadian co-rapporteur for a draft report on the role of parliaments in addressing key challenges to securing the health of women and children for the hundred and twenty-fifth assembly of the Inter-Parliamentary Union this past October in Bern, Switzerland.

The IPU, the international organization of parliaments established in 1889, holds the objective of fostering contacts, coordination and the exchange of experience among parliaments and parliamentarians from 159 countries. Working together with my colleagues and co-rapporteurs MP Paula Turyahikayo of Uganda and MP Francisco Sardinha of India, we presented a draft report at the assembly that was debated by approximately 200 parliamentarians. Our report and the feedback we received during those deliberations in Bern will be used as the basis for drafting an IPU resolution that will be considered at the hundred and twenty-sixth assembly in April 2012.

Over the course of nearly four hours, 55 countries took the floor during the debate to comment on our report and to highlight a variety of issues pertinent to their national contexts. They acknowledged the health of women and children as a human rights issue of deep concern to parliaments. Inadequate, weak and failing health systems, insufficient resourcing, financial and human, particularly in the context of entrenched poverty, the marginalization of women and girls, as well as the social and economic inequalities which hinder demographic groups from

accessing required health services were all identified as underlying causing of poor health outcomes. At all levels, preventing rather than curing was seen as a key strategy.

Our objective was to write a report that was international in scope and one that was focused specifically on concrete steps that could be taken by parliamentarians, a report that intended to serve as a framework and guide for parliaments to address specific issues related to maternal and child health. In addition, we wanted to emphasize the accountability of all actors in implementing existing promises, commitments and obligations.

Women and children's health was a leading item on the agenda of the IPU assembly, even highlighted by the UN Secretary-General Ban Ki-moon in his address to the delegates. I am happy to relay that many of those delegates recognized Canada's leading role on the issue. I was approached by a member of the World Health Organization who expressed her admiration for Canada's leadership in the IPU as well as on the world stage, especially in view of the Prime Minister's recent commitment of \$82 million to maternal and child health projects this past September.

As a Canadian senator, as a member of the Senate Human Rights Committee, and as an advocate for women's rights, I was enthusiastic to see the IPU take up maternal and child health as key issues. I am honoured to serve as a co-rapporteur on behalf of Canada and look forward to speaking to you again after the hundred and twenty-sixth assembly this spring.

[Translation]

ROUTINE PROCEEDINGS

THE ESTIMATES, 2011-12

SUPPLEMENTARY ESTIMATES (B) TABLED

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, the Supplementary Estimates (B), 2011-12, for the fiscal year ending March 31, 2011.

[English]

CONFLICT OF INTEREST FOR SENATORS

BUDGET AND AUTHORIZATION TO ENGAGE SERVICES—SECOND REPORT OF COMMITTEE PRESENTED

Hon. Terry Stratton, Chair of the Standing Committee on the Conflict of Interest for Senators, presented the following report:

Thursday, November 3, 2011

The Standing Committee on Conflict of Interest for Senators has the honour to present its

SECOND REPORT

Your committee, which is authorized on its own initiative, pursuant to rule 86(1)(r), (i) to exercise general direction over the Senate Ethics Officer; and (ii) to be responsible for all matters relating to the Conflict of Interest Code for Senators, including all forms involving senators that are used in its administration, subject to the general jurisdiction of the Senate, respectfully requests funds for the fiscal year ending March 31, 2012 and that it be empowered to engage the services of such counsel and technical, clerical and other personnel as may be necessary for the purpose of its examination and consideration of such matters as are referred to it by the Senate, or which come before it as per the Conflict of Interest Code for Senators.

Pursuant to Chapter 3:06, section 2(1)(c) of the *Senate Administrative Rules*, the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

TERRY STRATTON
Chair

(For text of budget, see today's Journals of the Senate, Appendix A, p. 389.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Stratton, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

FEDERAL LAW—CIVIL LAW HARMONIZATION BILL, NO. 3

FOURTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

Hon. John. D. Wallace, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, November 3, 2011

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

FOURTH REPORT

Your committee, to which was referred Bill S-3, A third Act to harmonize federal law with the civil law of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and

the civil law, has, in obedience to the order of reference of Tuesday, October 25, 2011, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

JOHN D. WALLACE
Chair

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

(On motion of Senator Angus, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.)

STUDY ON USER FEE PROPOSAL

PUBLIC SAFETY—FIFTH REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE PRESENTED

Hon. John. D. Wallace, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, November 3, 2011

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

FIFTH REPORT

Your committee, to which was referred the document "The Parole Board of Canada's User Fees Proposal" dated August 17, 2011, has, in obedience to its order of reference of Tuesday, September 27, 2011, examined the proposed user fee.

Your committee recommends that, in accordance with section 5 of the *User Fees Act*, the Senate approve the proposal from the Parole Board of Canada to increase current fee for the processing of a pardon application from \$150 to \$631.

Your committee has also made certain observations which are appended to this report.

Respectfully submitted,

JOHN D. WALLACE
Chair

(For text of observations, see today's Journals of the Senate, Appendix B, p. 394.)

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

(On motion of Senator Wallace, report placed on the Orders of the Day for consideration at the next sitting of the Senate.)

[Translation]

THE ESTIMATES, 2011-12

NOTICE OF MOTION TO AUTHORIZE NATIONAL FINANCE COMMITTEE TO STUDY SUPPLEMENTARY ESTIMATES (B)

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I give notice that later today I intend to move:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (B) for the fiscal year ending March 31, 2012.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

• (1350)

POVERTY

NOTICE OF INQUIRY

Hon. Fernand Robichaud: Honourable senators, I give notice that, two days hence:

I will call the attention of the Senate to the issue of poverty in Canada — an issue that is always current and continues to have devastating effects.

ORDERS OF THE DAY

THE ESTIMATES, 2011-12

NATIONAL FINANCE COMMITTEE AUTHORIZED TO STUDY SUPPLEMENTARY ESTIMATES (B)

Hon. Claude Carignan (Deputy Leader of the Government), pursuant to notice of November 3, 2011, moved:

That the Standing Senate Committee on National Finance be authorized to examine and report upon the expenditures set out in the Supplementary Estimates (B) for the fiscal year ending March 31, 2012.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

(Motion agreed to.)

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, I wish to draw to your attention the presence in the gallery of His Excellency Mr. Halim Benatallah, Secretary of State for Foreign Affairs responsible for Algerians abroad, of the People's Democratic Republic of Algeria. He is accompanied by the distinguished Ambassador of Algeria to Canada.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

[English]

AUDITOR GENERAL

MOTION TO APPROVE APPOINTMENT ADOPTED

Hon. Elizabeth (Beth) Marshall, pursuant to notice of October 25, 2011, moved:

That, in accordance with subsection 3.(1) of the *Auditor General Act*, R.S.C. 1985, c. A-17, the Senate approve the appointment of Michael Ferguson as Auditor General of Canada.

She said: Honourable senators, I rise today to speak to the nomination of Mr. Ferguson as Canada's next Auditor General.

I would like to say, honourable senators, that we are fortunate to recruit someone of Mr. Ferguson's calibre for this very important position. He appeared before this chamber on Tuesday to answer our questions. Mr. Ferguson is unquestionably qualified to be appointed as Canada's next Auditor General.

When Mr. Ferguson testified here on Tuesday, he told us what his background is. He is a chartered accountant by profession. For five years he was Comptroller General of the Province of New Brunswick; for the next five years, from 2005 to 2010, he was the Auditor General of the Province of New Brunswick; and from 2010 to present, he has held the position of Deputy Minister of Finance and Secretary to Management Board, a very senior position in the Province of New Brunswick.

Of particular importance to me, and I am sure to many senators in this chamber, Mr. Ferguson has had experience as both an auditor and an auditee, and I think that is very important. He has audited many organizations within the province of New Brunswick, but he has also had the experience of being audited by the Auditor General, and this bodes well for the future.

Mr. Ferguson also spoke of what I call extracurricular activities in his profession, and that will serve him and all Canadians well. He was the President of the New Brunswick Institute of Chartered Accountants, and he is well aware of current accounting and auditing issues, which the Auditor General must be knowledgeable about.

Mr. Ferguson is also a member of the Public Sector Accounting and Auditing Board of the Canadian Institute of Chartered Accountants. This organization prescribes standards for auditing and accounting in the public sector and government, and this also will serve him well in the future.

Mr. Ferguson spoke to us about his work experience. He knows how government works. He has participated in accounting and auditing standards for the public sector and government. He has worked with other provinces, other provincial Auditors General and the federal Auditor General, and he has experience managing a large staff.

Those who work with him — and there are many former politicians and bureaucrats — praise him for his professional capabilities, his dedication, his competence and, most important, his fairness.

Honourable senators, the role of Auditor General is very challenging, and I should know. I say it is sometimes filled with conflicts, and I would venture to say that it is often filled with conflicts. There will be many times when our new Auditor General will be under intense pressure. On Tuesday, Mr. Ferguson demonstrated that he performs well under pressure, on his own, by himself.

Honourable senators, I will be supporting the motion to approve the appointment of Michael Ferguson as Auditor General of Canada.

Hon. Tommy Banks: May I ask a question of Senator Marshall?

Senator Marshall: Yes.

Senator Banks: Thank you, senator.

As the honourable senator mentioned, she was an Auditor General. I am wondering what her position would have been, as an Auditor General, if she found that a government of which she was an officer appointed someone to a position when that person did not meet the stated, published qualifications for that position.

Senator Marshall: In my opinion, Mr. Ferguson meets the qualifications. He has made the commitment that he will become bilingual. He indicated that in this chamber. He has an excellent background to serve as Canada's Auditor General, and I think it is an excellent appointment; I support it totally.

Senator Banks: With respect to Senator Marshall, that was not my question. No one here has cast any aspersion or questioned the intent or the auditing abilities of Mr. Ferguson. They are unquestioned; no one questions them.

My question is the following: If there were a stated list of criteria — let us say half a dozen criteria — on a posting for a government job, and that government appointed someone who did not meet one of those qualifications, what would the reaction be of a reasonable Auditor General?

Senator Marshall: That is a hypothetical question, senator.

The officials testified here the other day, and they walked through the process with us. They explained how Mr. Ferguson ended up being the successful candidate. Mr. Ferguson has made the commitment. He acknowledges that he is not bilingual, but he has made the commitment that he will be in a year.

• (1400)

As a result of the competition, he came out as being number one. I am confident that he will be bilingual in a year and that he is an excellent choice.

Senator Banks: I understand better than I ever have before why this is not called “answer period.”

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, we have been asked, pursuant to the Auditor General Act, to approve the appointment of Mr. Michael Ferguson as Canada's Auditor General for the next 10 years.

As this chamber has heard, Mr. Ferguson served as Auditor General of the Province of New Brunswick. He left that position after 5 years of a 10-year term to accept the invitation of his Premier to serve as Deputy Minister of Finance. Let me be clear, and I confirm what Senator Banks said a moment ago: Everything I have heard and read supports the conclusion that Mr. Ferguson served the Province of New Brunswick capably and well as Auditor General and continues to do so as Deputy Minister of Finance.

My issue, and that of my colleagues on this side of the chamber, does not relate to what is in Mr. Ferguson's c.v. but rather what is not. It also relates to the fundamentally flawed process that resulted in his nomination by this government as Canada's next Auditor General.

My concerns and our concerns are not with Mr. Ferguson, but with this government and how it handled the selection process for this very senior and critically important officer of Parliament.

As everyone knows, the previous Auditor General of Canada, Ms. Sheila Fraser, retired from that position earlier this year at the conclusion of her 10-year term. In October 2010, the government properly published a notice of vacancy in the *Canada Gazette*, advertising for candidates to fill the position. That notice was quite lengthy. It detailed a number of skills and qualifications that the successful candidate should have and then it stated, and this is the critical point, “proficiency in both official languages is essential.”

In French the words were: “La maîtrise des deux langues officielles est essentielle.”

“Essential” is the word that was used. The notice did not say, as did the notice of vacancy for the position of the Commissioner of the RCMP, for example, that the ideal candidate should be proficient in both official languages. It did not say that proficiency in both official languages was essential sometime in the future after extensive language training. Rather, it called for proficiency now, today. That requirement was identified as essential. In other words, honourable senators, it was non-negotiable. That is how it should be.

I have looked through many notices of vacancy published by this government over the past few years. There were notices for officers of Parliament and positions that some have likened to officers of Parliament. Without exception, those notices demanded present proficiency in both official languages.

Honourable senators, bilingualism is at the very core of who we are as a nation. It has been and remains a defining issue for us in the Liberal Party of Canada. Frankly, I should have thought by now that we were past the stage where any party would take issue with that absolutely fundamental principle.

It does not mean that everyone everywhere in this country has to speak both languages, but it does mean that Canadians have the right to demand that people who hold certain offices in this country will be fluent in both languages. Among those positions, honourable senators, are our officers of Parliament.

As a unilingual, anglophone parliamentarian, I expect and have the right to be able to speak directly with any officer of Parliament in English. I absolutely respect that, equally, my francophone colleagues expect and have the same right to speak directly to any officer of Parliament in French.

The Harper government has decided to put forward, as a candidate for Auditor General of Canada, an individual who cannot deal equally with all parliamentarians, much less all Canadians.

In the other place, my colleague, Mauril Bélanger, tried to speak to Mr. Ferguson without the intervention of an interpreter. Mr. Ferguson could not understand what Mr. Bélanger said. Mr. Bélanger tried to encourage Mr. Ferguson to speak in French without reading from a prepared text. Mr. Ferguson could not. Mr. Ferguson readily acknowledged to us here the other day that he is not proficient in both official languages.

In other words, honourable senators, in putting forward Mr. Ferguson as its nominee, the government was ignoring one of the few requirements that it, itself, had said was essential for this position. Not only was the government prepared to ignore and bypass its own stated essential criteria for this very high position, but then it tried to slip that fact past the parliamentarians to whom the Auditor General reports.

Under the Auditor General Act, and as a further indication of the very special role of an officer of Parliament, the Prime Minister is required to consult with the leader of every recognized party in the Senate and in the House of Commons, as well as to obtain approval of the appointment by a resolution of the Senate and the House of Commons — the question we are now debating — before the appointment is made.

On August 31, Prime Minister Harper wrote to me advising me of his nomination of Mr. Ferguson. Nowhere in that letter, nor in the attached c.v., was there any suggestion that Mr. Ferguson failed to satisfy all of the essential requirements that the government had set forth for that position. Indeed, his c.v., which was attached to Mr. Harper's letter, was in both official languages. I now realize that the French version could not have been prepared by Mr. Ferguson.

Nothing that the Prime Minister provided to me as he sought my views indicated that Mr. Ferguson was not and is not proficient in French. Honourable senators, this was a critical fact that was omitted, and I would suggest deliberately omitted, from the information presented to me and the other party leaders. I, of course, was prevented from inquiring too closely before replying

to the Prime Minister, because his letter cautioned that the matter needed to be dealt with in confidence prior to the announcements — something which I, of course, respected.

This is wrong, honourable senators. This is not how one goes about appointing someone to one of the most senior, important positions in the land. You do not skip over a missing critical requirement of a position and then blithely ignore it, hoping no one will find out.

Last week, when we started to hear rumours that, in fact, Mr. Ferguson was not proficient in both official languages, we devoted two question periods to the issue. We read into the record the statement in the notice of vacancy that clearly provided that proficiency or mastery in both official languages is essential.

The Leader of the Government in the Senate indicated she had not seen the document. I gave her my own copy so she could see for herself. We asked how it was that a unilingual candidate had been nominated, contrary to the stated requirements. We asked about the timeline, wanting to know when the language requirements had been changed and whether that change had been communicated to other potential applicants. The Leader of the Government was unable to answer many of our questions.

Accordingly, we requested that the Clerk of the Privy Council appear before us in Committee of the Whole to answer these questions. We were told that the clerk was unavailable but that two senior public officials with knowledge of the process would appear instead. These two officials, as honourable senators will recall, did appear here on Tuesday. They confirmed what we had suspected from the beginning.

Indeed, the notice of vacancy set out that proficiency in both official languages was an essential requirement, and this was done because the selection committee, chaired by the President of the Treasury Board, himself a member of cabinet, "felt it was a very reasonable criterion for the Auditor General of Canada."

• (1410)

As Ms. Patricia Hassard testified, the entire Selection Committee supported this requirement. She pointed out that this was part of the notice of job vacancy for the previous Auditor General. In fact, honourable senators, I would note that Canada has had fully bilingual Auditors General going back more than two decades.

We then heard something very strange. Notwithstanding the statement that this was an essential requirement, the search firm retained by the Selection Committee advised at least one applicant — Mr. Ferguson — that in fact "essential" did not mean "essential," but rather there was some "flexibility." As he told us, "there could be some time for a candidate to achieve that proficiency once appointed."

Honourable senators, the search firm the government engaged is a highly experienced one. I can only assume that it had been instructed by the Selection Committee to make that statement. This was not a change that any reputable firm would make without instructions.

Honourable senators, I was disturbed to realize that this critical change — a change to something that had been listed as an “essential” qualification, one of the very few “essential” qualifications set out in the long notice — was never made officially. It was never publicized, and the position was never re-advertised.

On October 27, Maria Barrados, President of the Public Service Commission, testified before the Standing Committee on Government Operations and Estimates in the other place. She was asked what happens in the public service if the requirements for a position are changed over the course of a search for someone to fill that position. She was very clear. She said, “If they do change, you have to start again.”

Of course, honourable senators, that only makes sense. Who knows what other highly qualified individuals may have chosen not to apply for the Auditor General position because they were not themselves proficient in both official languages; yet, this government did not start over again and they did not re-advertise the position.

Ms. Barrados was asked specifically about language requirements. She described how in the public service “essential” means “essential.” However, we know what happened here. Mr. Ferguson could not and cannot meet the language requirement, so somehow the requirement was changed. This would not have happened in the public service. Ms. Barrados was very clear: “If you don’t meet the language requirement, you don’t get the job.” Period.

The officials who testified before us on Tuesday tried to tell us that the position of Auditor General is not under the rules of the Public Service of Canada. As an officer of Parliament, those policies would not apply.

Honourable senators, surely this is not an answer. Why would the process by which we select officers of Parliament be any less rigorous than the process that ordinary Canadians apply for, are guided by and are judged by in the public service?

The officials tried vainly to defend the government’s actions. They told us that in fact many qualified candidates were not interested in the job. The salary, we were told, was too low. The position of Auditor General of Canada, one that carries the highest respect from Canadians throughout the land, brings a salary of \$323,000 per year for 10 years. That is \$3.2 million. I find it disingenuous to try to say that the salary dissuaded all other public-spirited Canadians from this position. Governments in the past did not have any such difficulty. I am forced to wonder whether the real problem relates to this government’s treatment of independent watchdogs.

We all know the sorry record: the late-night firing of the President of the Canadian Nuclear Safety Commission; the ousting of Paul Kennedy from his position as Chair of the Commission for Public Complaints Against the RCMP; refusing to extend Peter Tinsley’s term as Chair of the Military Police Complaints Commission in the middle of its inquiry into the treatment of Afghan detainees; the ouster of the RCMP chief superintendent who had been the head of the Canadian Firearms Program but

inconveniently supported the gun registry; the failure to renew Pat Stogran’s term as Veterans Ombudsman — and the list goes on and on. Perhaps this sorry record explains why the government had difficulty finding a fully qualified candidate prepared to stand for the position of Auditor General of Canada.

Honourable senators, this government, as Prime Minister Harper has openly stated, makes its own rules. It chose as its nominee someone who admits that he cannot carry on a conversation in French, who cannot understand French when it is spoken to him and who cannot speak French except from notes that someone has prepared for him. The government then brought forward this nominee, knowing that a requirement that it had identified as “essential” was not fulfilled, and it did so without informing other potential applicants that this requirement was no longer essential, without informing party leaders that this critical qualification was missing and without informing parliamentarians and Canadians at large that this high officer of Parliament would not be able to communicate with them in the language of their choice.

Questions have been raised about whether under the Official Languages Act the Auditor General is required by law to be proficient in both English and French. As my colleague Senator Joyal powerfully pointed out in his exchanges on Tuesday, there are very serious questions, not simply about the process that is being followed, but there is serious doubt as to the legality of what this government is doing. These are questions that may fall to the courts to decide.

What is unalterable and irrefutable is that the process by which Mr. Ferguson’s name was brought forward is deeply flawed, so flawed that as responsible parliamentarians, we on this side cannot accept the outcome.

As I explained last week when speaking of Senator Murray’s contribution to public life, process matters; it is not a mere technicality.

We looked to see whether any amendment of the resolution was possible. We considered changing the effective date of the appointment to a date when Mr. Ferguson attains the CCC, not CBC, levels in French, those levels required of senior public servants. However, we concluded that the entire process in this case was so fundamentally flawed that it could not be saved by any amendment.

Honourable senators, let me recapitulate what the Harper government is proposing here. They want to give Canadians an Auditor General who for the first time in over 20 years is not fluently bilingual. This is not acceptable in 2011. Let us be clear: For the federal government, bilingualism is not just an afterthought; it is not a little inconvenient box on a form to be ignored. It is part of who we are. It is a matter of fundamental respect for our fellow Canadians, for our history, for our identity, for our present and for our future.

More than 40 years ago, Parliament passed the Official Languages Act, an act that is so important in this country that it has been recognized by the Supreme Court as having quasi-constitutional status. That act recognizes that in Canada, both English- and French-speaking Canadians have certain rights in dealing with their federal government.

Let me remind honourable senators that there are some 7 million francophones in this country. For 40 years, successive governments, Liberal and Progressive Conservative alike, have put in place policies to protect the right of federal employees to work in the language of their choice, English or French, and to ensure that in the Government of Canada no one —

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, I rise on a point of order. Someone took a picture in the gallery.

[Translation]

I would like someone to ensure that order is maintained in the gallery, please.

[English]

The Hon. the Speaker: Could the Black Rod secure the gallery and empty the north gallery?

Senator Cowan: Do you wish me to wait until your order is complied with, Your Honour?

The Hon. the Speaker: Yes. Thank you, senator.

Senator Cowan: As I said, for 40 years, successive governments of both political stripes, Liberal and Progressive Conservative alike, have put in place policies to protect the right of federal employees to work in the language of their choice, English or French, and to ensure that in the Government of Canada no one is a second-class citizen — anglophone or francophone, all are equal.

• (1420)

Today, employees have a right — a right, honourable senators — to meet with their superiors and speak in the language of their choice — the employees' choice, not the boss's. Mr. Ferguson admitted that he will not be able to do that. Senator Fraser asked what he would do if a francophone employee wished to meet with him privately to discuss a matter in confidence. He said he would not be able to do it.

Honourable senators, there is another problem. Employees have a right to work in the official language of their choice. There are undoubtedly thousands of memoranda and documents across the federal government that are only in French. As Auditor General, Mr. Ferguson would be expected to be able to read and understand any document relevant to an audit he is conducting, yet he is incapable of reviewing documents in French. He cannot now do the job. He would have to rely completely on others to do it for him.

Mr. Ferguson has said repeatedly that he appreciates the importance of the Auditor General being proficient in both languages and expressed his personal commitment to achieve this. I accept that Mr. Ferguson has the best of intentions. My issue is with the decision of the Selection Committee and then the Prime Minister in accepting "intention" as a satisfactory substitute for ability, particularly on a matter so critical to how we define ourselves as a nation.

[Senator Cowan]

Mr. Ferguson has served for 25 years in the public service of New Brunswick, Canada's only officially bilingual province. He rose to hold high positions — Auditor General and now Deputy Minister of Finance — yet he either never took the time or never succeeded in becoming proficient in French in 25 years.

He told us that his language skills have been assessed, but he could not remember what the score was. He was informed that he would need 1,200 hours to achieve his desired fluency goals. He said he estimates that he can accomplish this in approximately one year.

Mr. Ferguson received this news in February and has been working at French since then. It is now November, some eight or nine months later. We all saw very clearly that he is still not able to carry on a conversation or understand French when it is spoken to him.

I am also concerned about the implications of appointing someone as Canada's next Auditor General who plans to devote at least 1,200 hours in the first year to studying French. If he were to work full time, 40 hours a week studying French, he would be spending 30 weeks on nothing but French language training.

A cynic might ask whether this government has intentionally put forward someone to serve as Auditor General who will be so busy learning French that he will not have time to investigate things like \$50 million approved for Canadian border crossings but spent on gazebos and community centres hundreds of miles from any border and, in fact, in the riding of the President of the Treasury Board, Tony Clement, who, coincidentally, chaired the Selection Committee for the Auditor General.

Given the recent actions of Minister Clement, it is clear that we need an alert, focused, full-time, diligent Auditor General in this country. How many more millions of taxpayer dollars would this government waste and lavish on its friends if it knew that the Auditor General was not paying attention?

There is another matter that I must raise. My colleague opposite, Senator Brown, tried the other day to suggest that the Auditor General is really a bookkeeper who does not need to read words, just add numbers. That is simply wrong. A critical role of the Auditor General is to determine whether the government has, in fact, complied with laws, rules and policies, or whether it was prepared to gloss over requirements in particular cases. That was the issue in the audit conducted on the G8 Legacy Infrastructure Fund. There it was the Auditor General who uncovered the Treasury Board president's misspending of taxpayer dollars in his own riding, and his flouting of the rules and safeguards around how taxpayer dollars are to be spent. Minister Clement evidently set up a parallel system, operated out of his own constituency office.

How can we have confidence that Mr. Ferguson, who is prepared to accept an appointment that is the result of such a manipulated process — a process that flatly ignored a requirement stated to be essential — will rigorously carry out the duties and responsibilities of Auditor General when assessing other policies and accounting principles that are deemed to be "essential"? Policies and criteria were quietly set aside for his nomination to proceed, but is that not exactly the kind of government activity parliamentarians and Canadians look to the Auditor General to uncover and condemn?

Honourable senators, we face a highly unusual and, I believe, unprecedented situation here. It appears likely that the government's nominee will be rejected by every opposition party in both houses of Parliament, not only the recognized parties in the other place but also the Bloc Québécois and the Green Party members. All agree that Mr. Ferguson should not be appointed to serve as Auditor General of Canada.

How will Mr. Ferguson be able to function effectively, and how will he be able to command the confidence of Parliament without being able to gain the confidence and support of a single opposition party and, frankly, of even a single opposition member in either chamber?

What does this mean for Canadian democracy? This is a new low, honourable senators, from a government that has already entered the history books as the first government in a British parliamentary democracy to be found in contempt of Parliament. An officer of Parliament is the servant of Parliament. He or she answers to, serves and reports to Parliament — not to the government, but to Parliament. The essence of the role of any officer of Parliament is to assist parliamentarians in their duty to hold the government to account.

However, this government has turned the concept upside down, whipping its majority in line to impose an officer of Parliament, the Auditor General of Canada, on parliamentarians who reject that choice, on parliamentarians who will not be able to sit down and speak with the person who supposedly answers to them because he does not understand the language they speak.

Honourable senators, for all these reasons, my colleagues and I on this side of the chamber will participate no further in the process or in the vote to come. To continue with this travesty of a process would be to confer on it a legitimacy that it does not deserve. It is indefensible; it is wrong.

All of us in this chamber who genuinely believe in the importance of our two founding and official languages must publicly display the strength of that conviction by joining together to send a clear message to this government that these fundamental principles which define us as a nation must be respected.

Hon. Gerald J. Comeau: Would the Leader of the Opposition accept a question?

Senator Cowan: Of course.

[Translation]

Senator Comeau: Honourable senators, I would like to point out that the position of Auditor General is very important. The Leader of the Opposition said that this individual's role is to assist parliamentarians. That said, it is the parliamentarians who are authorized to prepare, draft and pass legislation.

[English]

They vote on the law. When the honourable senator votes, he votes on two laws — a law written in English and one written in French. We expect a servant of Parliament who does not vote on the laws to serve us to the best of his ability. However, we are demanding of this individual what we in this chamber do not demand of ourselves. The honourable senator himself has to use

an earphone in order to listen to debate. He might prove me wrong, but I do not think he can read the law in French that he votes on. Therefore, he is here lecturing us that the servants of Parliament should be proficient in the two languages where he is not prepared to be.

I am not asking him to be. I have never asked any parliamentarian, in the other place or in this place, to be proficient in both languages because under the law of the land in Canada we have two official languages.

At one point, the honourable senator said that New Brunswick is the only officially bilingual province in Canada. It is not an officially bilingual province. It is a province with two official languages.

• (1430)

People can aspire to serve their province either in French or in English. The Province of New Brunswick, as far as I know, has never demanded that its citizens be able to converse in both official languages and that they be proficient.

[Translation]

The federal government has never required Canadian citizens to speak both official languages in order to serve Canada's federal institutions. This has never been mandatory.

There are some positions, I admit, within certain institutions that are designated bilingual, depending on the department — National Defence, the Auditor General's Office, and any other federal institution. However, these positions are protected under the Official Languages Act, which means French language training and language improvement classes can be offered to certain individuals.

[English]

As far as I know, no institution of Canada has demanded a Canadian be officially bilingual in order to serve that institution.

As far as I know — prove me wrong if you can — the Auditor General's position is not designated as an officially bilingual position. It is not. We may want it to be, and if you want it to be, make it a part of the platform of your party; by all means, do it. We would love to have these positions officially bilingual.

I sent a copy of a report to Senator Mockler today. In that report the Official Language Commissioner indicated that we should encourage — not demand, not oblige — but encourage Canadians to be bilingual.

I support that position entirely. However, to demand that Canadians be bilingual, if the honourable senator wishes to carry this to the absolute end, I would add a little note here. The post of parliamentarians, in my view, is probably the most important in Canada, because the buck stops with us. We vote yes and no to legislation.

There is a Supreme Court further up the line, which, by the way, is not subject to the official languages legislation. I think the only federal institution that we know of that is not subject to the Official Languages Act is the Supreme Court of Canada, but all other institutions are subject to the Official Languages Act.

Senator Cools: Institutions, but not bilingualism.

Senator Comeau: That is institutions, but not bilingualism; Senator Cools is absolutely right.

That is why Senator Cowan can come in, a unilingual Canadian, and hope to serve Canadians. God bless you for it because I approve of that. I cannot accept the concept that a Canadian who has only one of the two official languages, being French or English, cannot serve their country. I cannot accept that.

Some Hon. Senators: Hear, hear!

Senator Comeau: If we want to designate the position of the Auditor General officially bilingual, by all means, try to do so. Make all of these positions bilingual, by all means, if you want to do so, but do it under the protection of the Official Languages Act.

That legislation has served us well. God bless all of those who worked on this file. I was there when the Official Languages Act was redone in 1988. I remember the acrimony back then. I was part of it. I almost lost friends of mine during those days because of the anti-French language sentiment. I remember it well, I went through it; but we persevered and we made the changes in 1988.

The Official Languages Act was brought in initially under a Liberal government, under Trudeau, and was strengthened under the Mulroney government in 1988. I was there as a member of the other chamber. The act has worked, and it has served us well. Let us not come up with this new hybrid that you are proposing now — that on the fly, we can start designating certain positions in Canada as being bilingual.

How can the honourable senator evaluate Mr. Ferguson's French? He was referring to the fact that Mr. Ferguson was not francophone. Even I do not find myself capable of evaluating Mr. Ferguson's competence in French, so how can the senator opposite do so?

Let us get back to reality here. If he wants to make changes, by all means, propose them, but not on the fly like he is doing this afternoon.

Some Hon. Senators: Hear, hear!

Senator Cowan: I thank my friend Senator Comeau for his comments and for his questions. He is a friend of mine and I respect his commitment to our official languages regime that we have in Canada, and the importance of that. I respect what he says with respect to the difficulty that proposition has presented for him and others on all sides over the years.

If I could make a couple of comments first, I will not enter into the legal debate about whether or not the Auditor General as an individual is required by law to be proficient in both official languages. My colleague Senator Joyal referred the other day to the amendments made in 1988 to the Official Languages Act. At the time that the honourable senator referred to, the Mulroney government brought in revisions, updates and improvements to

the Official Languages Act, and he argued that under section 24, the Office of the Auditor General — and by that he interpreted that to mean the incumbent, the holder of the office — must be bilingual.

That is his position. I think it has great merit. It is not for me to decide whether that is accurate; a court may take a view on that. That is his position. That was put to the officials the other day. That is a debate for another place and another day.

My point is that I think Senator Comeau's quarrel is not with me but with his own government. It was not me who drew the notice of the vacancy that said that language proficiency in both official languages was essential. That was his government that made that language proficiency an essential requirement. It was his government and a process begun under his government that changed it. That is my argument. My argument is with respect to the process.

His government could have said that proficiency in both official languages would be preferred, or would be an asset, or the incumbent would be expected to achieve a certain level of language proficiency within two or three years or in the course of his term. That would be perfectly in order for his government to propose that.

I suggest that if Senator Comeau's government had done that, there would have been outrage. People would have said, quite properly, the person who holds that position, whether or not it is required under the Official Languages Act, in this day and age must be proficient in both official languages.

Senator Comeau's government — and I commend them for doing it — have put in the job description, in the job vacancy notice and the criteria for the selection, exactly what they should have put there, that the applicant must be proficient now. At the time of the application, at the time of taking on the job, at the commencement of the term, that is when you have to be proficient in both of Canada's official languages. That was the correct decision.

Somehow, for some reason, his government changed the process in midstream. They said there was going to be some flexibility allowed and that as long as Mr. Ferguson achieved that level of proficiency, which it still says is necessary and which Mr. Ferguson acknowledges is necessary, he does not have to have it at the commencement. He can take a certain amount of time during his term of office to become proficient.

Surely the point is not whether the Auditor General should be proficient in both official languages. Surely, today, we would say that he must be. Senator Comeau's government said he must be. He acknowledged he should be. The fact is, he is not. The nominee that was brought forward is not bilingual. With the best of intentions, he may become bilingual at some time in the future, and I certainly hope he will. He will have rounded out his resumé by that point. However, his resumé is sadly deficient, not by the criteria set forth in the Official Languages Act, not by the criteria I am suggesting should apply to the selection, but by the criteria that your government, the Selection Committee chaired by the successive Presidents of the Treasury Board in your government, set as essential, not desirable but essential. Those are your criteria, and I agree with them.

• (1440)

The fact is that the process changed. It was skewed. It was altered without notice to Canadians, without notice to parliamentarians and without notice to present or potential applicants for the job. That is the problem. I suggest to Senator Comeau that on that point, his argument is really with his own government.

Senator Comeau: I will pursue my question then. I listened very carefully to the two officials, one from Treasury Board and one from the secretariat of the Privy Council. I think they went out of their way to explain the process by which they arrived at the individual in question and that they were perfectly satisfied. If I recall, and I am going from memory a bit, they said a number of the criteria had to have a little bit of the water placed in the wine because not one individual had come up with virtually every criterion that was part of the qualifications that were required.

Having said that, I leave it to the professionals to decide whether the word "essential" means it is obligatory or it is very important. I am not going to decide whether "essential" is obligatory or merit. I will leave that to the linguists to decide.

However, the honourable senator is saying that had the government not said "essential" in the qualifications, there would have been an outcry. Why would there have been an outcry? Even then, for what purpose would there have been an outcry? I think we have all agreed that it is important that everyone be bilingual. It would be absolutely great, but it is not obligatory.

If it is obligatory, and I am coming back to my point, for a servant of Parliament to be officially bilingual, what exempts Senator Cowan, good friend that his is? We are good friends and have known each other for years and years. I agree he has every right to serve in this chamber, and I do not take quarrel with the fact that he is a unilingual anglophone. However, what makes him exempt and makes his servant obliged to learn the other language? What gives him the right to be exempt? Why should Canadians not be up in arms because he is not bilingual? That is my argument.

Senator Cowan: Maybe they are, honourable senators, but we are talking about the nomination of your government for this person to be Auditor General of Canada. That is the point. That is the issue we are dealing with. Senator Comeau's quarrel is not with me; it is with his own government.

[Translation]

Hon. Jean-Claude Rivest: Honourable senators, I would like to say a few words about the motion. I have always been a bit astonished at the talent governments have for making things more complicated than they need to be. We have here a good example. It would have been so simple to choose an auditor general who, like Sheila Fraser, speaks both languages.

This issue is even more difficult to address given the fact that we cannot help but agree with what Senator Marshall said about Mr. Ferguson's professional qualifications. That is clear. At the same time, it is difficult to disagree with the concerns of the members

of the official opposition here, whose members in the other place made an unusual parliamentary move in order to express their support for bilingualism in Canada.

Since there will not likely be a vote on this motion, I would simply like to say that I disagree with the appointment of Mr. Ferguson in the current circumstances.

Very briefly, the reasons are quite simple. Of course, they pertain to the requirement — in my opinion — that one must be bilingual to hold the position of Auditor General.

Please note that I agree with the concerns expressed by Senator Comeau when he said that the Official Languages Act does not require Canadians to be bilingual. The act applies to institutions. It is true. Yet, countless numbers of Canadians — the young, the not-so-young, and people of every linguistic background other than French — learn French and help build Canada's linguistic duality, despite the fact that they are not obliged to do so. They believe that Canada is a country where linguistic duality has a place. They — those who are not francophone — want to make an effort to learn French.

Why is that? Clearly, there is no legal or constitutional obligation for someone who wants to hold a public office to be proficient in both languages. However, I would expect that someone who wants to serve his or her country would voluntarily agree, without legal or constitutional obligation, that knowledge of both languages would be appropriate and preferable for anyone in an important public office in Canada. That is what it comes down to in the end. That is what leads me to object to the fact that Mr. Ferguson was asked to accept the position of Auditor General.

As Senator Cowan stated, this office reports to Parliament, and to all who have been elected. We expect House of Commons and Senate officers to serve our parliamentary institutions in both languages, which they do voluntarily. That is quite right and quite Canadian. Why is this exception being made for the Auditor General?

Just to summarize my thoughts, I would like to quote André Pratte's editorial from this morning's edition of *La Presse*. He said one thing that echoes all of my concerns about the appointment. He simply said:

Large national institutions, which, among other things, are responsible for reflecting the Canadian ideal, should be led by people who are bilingual, who are capable of communicating with their employees and the public in both French and English.

And that is even more important when it comes to the Auditor General's work. Of course, the main requirement — as Senator Marshall stated so well — is that he possess the administrative competencies, and Mr. Ferguson is competent, I have no problem in saying. However, there is one very important aspect of being Auditor General. When the report is written, he passes judgement on the federal public administration and he shares that information directly with Parliament, of course, and with the public as well. The government will, of course, make its viewpoint on the topic known, as will the opposition, but the public will

view both the government and the opposition versions with some scepticism. But when the Auditor General makes a statement, the public puts their trust in it and believes it.

Should the Auditor General be able to speak not only here in Parliament, but also to the media — on the radio, on television — to explain the report, as Ms. Fraser did?

How will Mr. Ferguson, as competent as he may be, fulfil this fundamental responsibility as Auditor General? I understand that he will make a great effort to learn French and that he will succeed, but it seems it would have been highly preferable for the government to demonstrate its convictions — which I do not question — regarding Canada's linguistic duality, regarding the equality of both official languages. It seems to me that the government has simply made a mistake in endorsing the selection of a unilingual candidate.

• (1450)

Unfortunately, I am not sure why but the government cannot admit that it made a mistake. I believe that it would have been much easier to convince Mr. Ferguson to say that it does create problems.

According to the newspapers, the commentaries and public opinion throughout French Canada — and particularly in Quebec — this appointment is not good for national unity. And I believe that it is the ultimate criterion that we should be looking at. It is not a terrible tragedy, but it is not good for national unity and it is for that reason that I oppose this appointment.

Senator Comeau: If I have understood correctly, Senator Rivest believes that it is not mandatory for the Auditor General to be bilingual. Conversely, he says that the position should obligatorily be a bilingual position. However, Senator Rivest, as a parliamentarian, will not support the appointment of Mr. Ferguson because he is not bilingual.

We have heard unilingual members of the official opposition in the Senate say that they are not even going to vote because they oppose the appointment of Mr. Ferguson. They will not vote and will not agree to him having the position if he is not bilingual. There are parliamentarians in this place who are unilingual. They cannot string three words together in French. These people are prepared to make a decision about a candidate, a servant of Parliament, and are telling us that “the servants need to be bilingual, but not us.”

That is the message they are sending.

Senator Rivest is from Quebec, the province that created Bill 101, and is telling us that this will harm national unity. I find that a bit of an exaggeration.

Senator Rivest: The senator should cite an example of a senior official in the Quebec public service who cannot speak English.

Senator Comeau: I congratulate the province of Quebec if all its officers of Parliament are bilingual. I congratulate Quebec. However, I am in no position to assess their language skills.

[English]

The Hon. the Speaker: Are honourable senators ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: On division.

The Hon. the Speaker: Adopted, on division.

(Motion agreed to, on division.)

[Translation]

ADJOURNMENT

MOTION ADOPTED

Leave having been given to revert to Government Notices of Motions:

Hon. Claude Carignan (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday, November 15, 2011, at 2 p.m.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators to adopt the motion?

Hon. Senators: Agreed.


(Motion agreed to.)

(The Senate adjourned until Tuesday, November 15, 2011, at 2 p.m.)

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